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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 09/992,087 | 11/12/2001 | Larry Fabiny | 019930-005500US | 9420 |
| 20350 | 7590 | 12/05/2003 | EXAMINER | |
| TOWNSEND AND TOWNSEND AND CREW, LLP TWO EMBARCADERO CENTER EIGHTH FLOOR SAN FRANCISCO, CA 94111-3834 | | | HEALY, BRIAN | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 2874 | |

DATE MAILED: 12/05/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/992,087

Applicant(s)

FABINY, LARRY

Examiner

Brian M. Healy

Art Unit

2874

-- **Th MAILING DATE of this communication appears on the cover sheet with the correspondence address --**
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-18, 21-26 and 28-32 is/are rejected.
- 7) ☒ Claim(s) 6, 19, 20 and 27 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 November 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) same.

- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: Brian Healy

102 REJECTIONS

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1-5, 7-18, 21-26 and 28-32 are rejected under 35 U.S.C. 102(a) and (e) as being anticipated by Tarpin et. al., U.S. Patent Application Publication No. US2003/0128917A1.

Tarpin et. al. teaches (Figs.1-58) an optical wavelength router and method of wavelength routing and/or multiplexing using the router including a plurality of input/output ports 610,625-

650 optical fiber port with a plurality of spectral bands with wavelength subsets including plural wavelengths directed to a plurality of optical fiber output ports with a free-space optical train being focused by a collimating lens system 612 disposed between the input and output ports also including a transmissive dispersive element 622a-g and a fully reflective mirror 611 (Note that the dispersive element can be a Bragg grating and can be in a curved configuration, note Fig 55) with the optical train being configured so that the light encounters the transmissive dispersive element at least four or more times before reaching the output ports and a dynamically configurable element in the form of rotatable micro-mirrors, 616, 617, 620, 615a-g, 635, 636, 637, which clearly, fully meets Applicant's claimed limitations.

ALLOWABLE SUBJECT MATTER.

Claims 6, 19-20 and 27 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

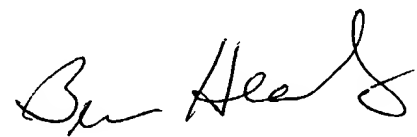
None of the references of record teaches or suggests a routing mechanism (as claimed in claim 2) with a configuration that results in at least one output port receiving no spectral bands (claim 6) and the recited first and second cylindrical lenses used in conjunction with plurality of tiltable micromirrors and the transmissive dispersive element, (as is recited in claims 19-20) and the orthogonal beam collimating arrangement recited in claim 27.

Any inquiry concerning the merits of this communication should be directed to Examiner Brian M. Healy at telephone number (703) 308-2693. Any inquiry of a general or clerical nature (i.e. a request for a missing form or paper, etc.) should be directed to the Technology Center 2800 receptionist at telephone number (703) 308-0956, to the technical support staff supervisor (Team 2) at telephone number (703) 308-3072, or to the Technology Center 2800 Customer Service Office at telephone number (703) 306-3329.

A copy of PTO-1449 will be attached to this office action.

BRIAN M. HEALY
Primary Patent Examiner
Group Art Unit 2874

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Li et. al., U.S.P. No.6,594,082 (Figs.1-11), Cappiello, U.S.P. No.6,556,297(Figs.1-9), Wu et. al., U.S.P. No.6,288,807(Figs.1-16B) and Wu et. al., U.S.P.No,5,978,116(Figs.1-16B).

A handwritten signature in black ink, appearing to read "Brian Healy", is written in a cursive style.

Brian Healy
Primary Examiner